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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/682,353	08/24/2001	Richard M. Hall	1320.02	8397

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EXAMINER

BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3764

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DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/682,353

Applicant(s)

Richard Hall

Examiner

Michael Brown

Group Art Unit

3764

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-33 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☒ Claim(s) 33 is/are allowed.
- ☒ Claim(s) 1-2, 11-15 and 20-21 is/are rejected.
- ☒ Claim(s) 3-10, 16-19 and 22-32 is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: Some of the structural limitations recited in the summary of the invention are not recited under the detailed description of the invention (i.e., an inter- dentally extensible and retractable means, the split pole magnet or the shoulder means provided partially or entirely around, or to one side of the magnetic means).

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 20-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Blechman.

Blechman discloses in figures 1-4 magnetic orthodontic appliance that anticipates a dieting aid comprising at least one pair of frames (18, 34), magnetic means (42, 44) an inter-dentally extensible and retractable means (16, 26 and 36, 38), the magnetic means are replaceable (they can be slid off of the wires 16 and 38) and the magnetic means has at least one planar face (fig. 1).

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blechman in view of Clark.

Blechman discloses in figures 1-4 a magnetic orthodontic appliance that anticipates a dieting aid, substantially as claimed. However, Blechman does not disclose the magnetic means being laser welded to the frame. Clark teaches on page 11, section 0104, line 6, laser welding to connect a segment 334 to a post 330. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the magnetic means disclosed by Blechman could be laser welded to the wire as taught by Clark in order to form a permanent connection between the magnetic means and the wire.

Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blechman in view of Dworkin.

Blechman discloses in figures 1-4 a magnetic orthodontic appliance that anticipates a dieting aid, substantially as claimed. However, Blechman does not disclose the magnetic means being secured by an acrylic mass. Dworkin teaches in figure 7 an intraoral appliance comprising a magnetic means 18 secured to a frame 60 by an acrylic compound mass 74. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the acrylic compound as

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taught by Dworkin could be substituted for the bands (18,34) disclosed by Blechman because either device could be used to hold the magnetic means around the teeth. The acrylic compound could be any color (white like teeth or flesh colored, white or black) in order to enhance the appearance of the device.

Allowable Subject Matter

Claims 3-10, 16-19 and 22-32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 33 is allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smiley and Dellinger, each discloses magnetic device. Although each of these references is pertinent prior art, neither was used to reject any claims, in the first office action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 703-308-2682. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 703-308-2698. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

M. Brown
May 3, 2004



MICHAEL A. BROWN
PRIMARY EXAMINER